

Erskine v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Court of Appeal
Citation	2014 BCCA 96
Result	Appeal Dismissed
Judge	Madam Justice Kirkpatrick Madam Justice Bennett Mr. Justice Willcock
Date of Judgment	March 5, 2014
WCAT Decision Reviewed	WCAT-2012-02032

Keywords:

Judicial Review – Standard of review – Patent unreasonableness – Procedural fairness – Causation – Whether injury arose out of and in the course of employment (section 5(1)) – Evidence – Credibility – WCAT's duty to investigate

Summary:

A forklift ran over Mr. Erskine's left foot while he was at work. He subsequently developed left foot, knee, hip, and low back pain. The Workers' Compensation Board (Board) initially accepted Mr. Erskine's claim. Upon review, the Review Division of the Board denied Mr. Erskine's claim, finding that the forklift accident did not cause his injuries.

The Workers' Compensation Appeal Tribunal (WCAT) denied Mr. Erskine's appeal. It accepted that the forklift incident did occur, but found that the left foot, knee, hip and lumbar back symptoms did not arise out of and in the course of Mr. Erskine's employment. The WCAT panel relied on a doctor's note contemporaneous with the date of injury which made no note of the forklift accident, but recorded that Mr. Erskine was "pushing a quad" several weeks earlier and had developed left foot and ankle pain (the "Contemporaneous Note"). The Review Division had also relied on the Contemporaneous Note in its decision.

Supreme Court:

The B.C. Supreme Court dismissed Mr. Erskine's application for judicial review of the WCAT decision: 2013 BCSC 1583. Specifically, the Court found that WCAT performed the task that it was required to do, which was to consider Mr. Erskine's evidence in the context of all the evidence and reach a conclusion on whether, as a whole, the evidence demonstrated that the symptoms described by him were caused by the forklift accident. The Court found that there was evidence supportive of WCAT's conclusion that causation was not established. WCAT's decision was therefore not patently unreasonable.

Court of Appeal:

On appeal, the Court found that WCAT's decision was not patently unreasonable nor procedurally unfair.

WCAT was entitled to examine, and reject, the factual underpinnings of the medical evidence that supported the finding that Mr. Erskine's foot injury was caused by the forklift incident. The Contemporaneous Note made no note of the forklift accident, but recorded that Mr. Erskine was "pushing a quad" several weeks earlier and had developed left foot and ankle pain. A later medical report recorded that, according to Mr. Erskine, he was injured during the forklift accident. The Court found that WCAT dealt with the conflict between these two medical reports. WCAT reasonably concluded that the later medical report recorded the "worker's belief" that his symptoms were attributable to the workplace incident. In doing so, WCAT appropriately engaged in the task of examining the factual underpinnings of the report.

WCAT's reasoning in relation to the medical opinions on causation was clear. Therefore, its failure to mention a Board Medical Advisor's opinion did not constitute a failure to deal with a critical issue, such that the tribunal's reasoning was unclear. Nor did it indicate a substantive error by the tribunal.

The Court agreed with the chambers judge that there was some evidence to support WCAT's conclusion that the forklift incident was not the cause of the medical condition resulting in Mr. Erskine's claim. There was evidence of a pre-existing and degenerative condition. There was also evidence of subsequent injuries. WCAT's decision was therefore not patently unreasonable.

WCAT did not breach procedural fairness. Mr. Erskine knew of the use to which the Contemporaneous Note had been put, because the Board Medical Advisor had interpreted the note, and the Review Division had placed significant weight on the note. It was open to Mr. Erskine to call the doctor that wrote the Contemporaneous Note (the "Doctor") as a witness before WCAT, or to obtain a written statement of his evidence. Mr. Erskine did not seek to do this, thus, WCAT did not refuse him the opportunity to test and challenge evidence. The absence of such requests by Mr. Erskine, as well as the absence of a request for WCAT call the Doctor as a witness, meant that it could not be said that WCAT placed an inappropriate burden on Mr. Erskine by requiring him to make the Doctor his witness.

The Court also found that WCAT did not depart from the rules of evidence described in Board policy item #97.00. It was open to WCAT to receive the Doctor's notes and to conclude that the Doctor had accurately recorded what he was told by Mr. Erskine. Thus, it was not possible to say that WCAT could not arrive at a sound conclusion with confidence regarding the report of injury provided to the Doctor.

The Court dismissed Mr. Erskine's appeal.